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February 21, 2020

Bruce Augustine
Enforcement and Compliance Assurance Division (3ED21)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Augustine.bruce@epa.gov

Re: Paul Wissmach Glass Company, Inc.
Notice of Violation /Opportunity to Show Cause.

Dear Mr. Augustine:

Paul Wissmach Glass Company Inc. "(PWG") has requested that Steptoe & Johnson, PLLC respond on its behalf to the February 3, 2020 Notice of Noncompliance/Opportunity to Show Cause ("NON/Show Cause") issues by Ms. Karen Melvin of Region III which was received by PWG on February 11, 2020.

As will be described in greater detail in this letter, 40 C.F.R., Part 63, Subpart SSSSSS ("6S") is not applicable to the PWG facility located at 420 Stephen Street, Paden City, West Virginia 26159. Accordingly, EPA's Summary of Allegations of Noncompliance as set forth in Enclosure A to its NON/Show Cause is not correct.

PWG would be pleased to confer with EPA regarding this NON/Show Cause.

Overview of Paul Wissmach Glass Company, Inc.

PWG is a small business which has been in existence for more than 100 years. PWG produced cut glass in flat sheets as its only product (except for off-specification cullet which is sold to others). PWG currently has only 28 employees.

The PWG facility has experienced minimal changes since the 1960s. All of its operations are "grandfathered" from the minor source permitting requirements of 45 CSR 13 that was adopted by West Virginia in the early 1970s.

All melting chambers at PWG for melting glass are "periodic furnaces". Melting chambers into which raw materials are manually charged do not produce glass on a continuous basis. The two (2) types of melting chambers used by PWG are listed below:

1. Pots – There are a total of eight (8) pots at the facility which receive HAP Metal

containing batch.

2. Day Tanks – There are a total of five (5) day tanks at the facility, but only one (1) has HAP Metal containing batch.

Not all pots are used for melting on a daily basis. Pot usage is based on customer orders and repair needs. The one small day tank is only used with manganese which is only processed approximately two weeks per year. The melting chambers used by PWG are manually charged (employee with shovel) over an approximately fifteen (15) minute time period up to four (4) times per day (approximately one hour of manual charging time per melting chamber – pot or day tank). PWG has no continuous furnaces.

PWG produces multiple colors of glass panels (approximately 34 inches by 90 inches by a few millimeters thick (2 to 5 mm). The products are all considered stained glass. All glass melting involving HAP containing batch is performed in individual unit glass melting chambers (total of 8 pots and 1 small day tank). In addition, some colored glass is produced using HAP containing cullet (previously produced at PWG at end of glass campaign and held fur future use) in lieu of HAP metal compound addition. The various metal compounds utilized by PWG are received in small containers of fifty-five (55) pounds or less.

PWG has a baghouse that services bulk material bins (sand, soda ash, and feldspar) for capture of dust during transfer of the raw materials to the bins. The baghouse also services batch preparation and mixing. Metal compounds are the last ingredient added to the batch prior to mixing. This baghouse services the transfer of batch to the batch hoppers which hold the mixed batch until the manual charging is complete. While no efficiency data for this baghouse is available in the plant, it is assumed to be 99% efficient at removal of most particle sizes of dust generated during these activities. This efficiency is based on similar baghouse type air pollution control equipment.

The work practices utilized during the manual charging include:

a. Closing the damper between the pot and the flue which discharges to a stack during the time of shoveling batch into the chamber.

b. The temperature of molten glass in the chamber receiving the manual charge is approximately 2,400 degrees F. At this temperature the solid charged batch quickly liquefies thus minimizing fugitive emissions of HAP Particulate to the Stack or workplace.

The temperature of the flu/stack system allows for cooling of the process exhaust air prior to discharge to the environment. This cooling allows for condensation of potential metals from the air stream in the flue/stack system.

Applicability of Subpart SSSSSS

The fundamental issue raised by EPA's NON/Show Cause is whether the PWG facilities are

subject to the 6S NESHAP that was promulgated by EPA in 2007.[1]

Significantly, in adopting this rule, EPA elected to promulgate a standard for area sources rather than a standard requiring maximum achievable control technology (MACT). In the proposed rule leading to the adoption of 6S, EPA explained the significance of its decision as follows:[2]

> Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources "which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants." Under section 112(d)(5), the Administrator has the discretion to use generally available control technology or management practices (GACT) in lieu of MACT. Pursuant to section 112(d)(5), we have decided not to issue MACT standards and concluded that GACT is appropriate for these three source categories.
>
> Additional information on the definition of GACT is found in the Senate report on the legislation (Senate Report Number 101—228, December 20, 1989), which indicates GACT means:
>
> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.
>
> Consistent with the legislative history, in addition to considering technical capabilities of the facilities and the availability of control measures, we may consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories that may have few establishments and many small businesses.
>
> Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted

1 72 Fed. Reg. 73180 (December 26, 2007).
2 72 Fed. Reg. 53840 (September 20, 2007).

> above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.
> *Emphasis added.*

As a follow-up to the proposed rule providing that EPA has elected to pursue the area source – rather than MACT – approach to allow it to consider cost and economic impact on small businesses, EPA revised the proposed rule to make it clear that the rule would only apply to "relatively large manufacturing plants that operated continuous glass furnaces."[3] PWG certainly does fit into such a category.

EPA went on to state that most of the concerns of the stained-glass manufacturing section, as well as other organizations, will be addressed by making it clear that 6S would not apply to "periodic or pot furnaces."[4] As stated above, periodic and pot furnaces are they type of furnaces used by PWG.

EPA further explained limited nature of its final 6S rule as follows:[5]

> "We have revised the applicability criteria of the rule in § 63.11448 to clarify that periodic or pot furnaces are not part of the source category. The final rule applies only to glass manufacturing plants that operate continuous furnaces and use one or more of the glass manufacturing metal HAP as raw materials.

EPA then goes on to emphasize that the continuous furnaces to be included in 6S are those where the continuous furnace is used to produce glass. EPA states:[6]

> "However, based on our review of the comments received on the proposed rule and the available data, we have decided to clarify that this final rule only applies to continuous furnaces and not to periodic furnaces. We believe this clarification ameliorates the commenters' concerns regarding the production threshold. In this final rule, we have revised § 63.11448 to apply only to facilities that use continuous furnaces to produce glass. *Emphasis added.*

Any ambiguity about the applicability of 6S to small businesses such as PWG was eliminated in the preamble to the final rule, when EPA considered the cost impact of the 6S rule. There EPA made it clear that only three affected furnaces would require new controls.[7] These sources have been identified as facilities with 90 to 218 workers,[8] clearly larger than PWG.

EPA itself specifically addressed the impact of 6S on small business and in the case of Glass Manufacturing applied the definition of small business found at 13 CFR 121.201 and determined that a small business was an entity with less than 750 to 1000 employees and that the rule would not have

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3 72 Fed. Reg. 73186 (December 26, 2007).
4 Id.
5 Id. At 73183.
6 Id. At 73187.
7 Id. At 73194..
8 "Economic Impact Analysis for Glass Manufacturing – Area Sources" by Tom Walton, August 7, 2007. EPA-HQ-OAR-2006-0360-0082.

a significant economic impact on a substantial number of small entities.[9]

Conclusion

EPA's NON/Show Cause incorrectly applies 6S to PWG. It is clear on the face of 6S, that the rule was intentionally written to avoid impact on small businesses such as PWG. In addition, the preamble to the rule explicitly states that 6S is not intended to apply to periodic or pot furnaces such as are used by PWG and that the reference to "continuous" furnace is clearly a reference to furnaces that continuously produce glass – which is not the case with PWG.

For EPA to reach a contrary conclusion now – more than 12 years after the rule became final – is an effective revision to the rule requiring a new rulemaking process.

Very truly yours,

David M. Flannery

DMF/vlr

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9 Id. At 73195.